IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.142/07
Meharchand & Ors. Vs. Hoshiyar Singh & Ors.

17.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri M.K. Jain for petitioner.

Heard learned counsel for the petitioner.

Learned counsel for the petitioner in assailing the order passed by the Civil dated 28.3.2006 and the Revisional Court dated 7.8.2006 has basically made two submissions. His first submission is that the learned Courts below have wrongly decided the issue no.1 in favour of the petitioner by holding that it was for the petitioner to prove that the Bahi Khata Ex.1 did not contain his signatures by producing expert. It was argued that such a view was contrary to the provisions of Section 102 of the Evidence Act because burden of

proof would always be on the person who brings the suit of the claim. Consequently, both the Courts have misread the evidence when they stated that the petitioner did not deny his signatures whereas the fact was that in the cross examination the petitioner has denied. Secondly, it was argued that while the Court of Civil Judge fixed the repayment schedule in 12 installments, 11 installments of Rs.5,000/- each and the last and the 12th was of Rs.4,190/- and the Revisional Court then re-scheduled the mode of payment by fixing 24 installments, viz- 23 were of Rs.2,500/- each and the last and the 24th was of Rs.1,690/-. Learned counsel argued that this was contrary to Rule 11 of the Rajasthan Relief of Agricultural Indebtedness Rules, 1957 (for short- `the Rules') according to which for fixing the amount of installments in which the debts shall be paid, the court shall ascertain the net annual

income of the debtor and the total amount of installments payable by the debtor shall not exceed the net annual income. Learned counsel argued that the income of the petitioners who is debtor in this case was Rs.3,900/- and therefore the payment of Rs.2,500/- out of that would practically leave the petitioners with nothing to survive.

On consideration of the arguments and perusal of the impugned order I find that the Civil Court on issue no.1 has noted that though the petitioner when he appeared in evidence as a witness denied having received the loan but he did not produce any evidence for denial of signatures contained in Ex.1 from A to B. But this observation cannot be read in isolation of the other discussion made while deciding issue no.1. The Court noted that apart from Hoshiyar Singh, the creditor A.D. Prithvi Singh has also proved that the entry in the Bahi

Khata did contain the signatures of the petitioner and evidence of these two witnesses is not such which can be disbelieved. On the contrary, the Court found that the petitioner in his cross examination not only denied his signatures on Ex.1 but also denied the signatures on Vakalatnama Ex.2. The Court when compared the two signatures as also the signatures of the petitioner contained on the written statements found that they were of the same person. It was in that context that the Court when it noticed that the creditor has discharged his initial burden and if the petitioner wanted to disprove his signatures, it was for him to summon the expert witness. This finding was upheld by the learned Revisional Court.

The Court can very much compare the signatures and come to a prima facie conclusion with the help of Section 73 of the Evidence Act and in my considered

view, no error has been committed by the courts below while recording the finding on issue no.1.

On the other aspect of the matter that the installments should have been fixed in such a way that the petitioner would be left with sufficient amount for his livelihood where the repayment schedule would be spread over 12 years as per Rule 11, supra, I am not inclined to agree with the submission because Rule 11 provides that the total number of annual installments shall not exceed 12 but that rule cannot be interpreted to mean that the repayment has to be made only by annual installments and that too, always spread over a period of 12 years. In the present case while the first court had fixed the scheme of repayment in 12 monthly installments, the learned Revisional Court has already relaxed the same by now requiring the petitioner to make repayment in 24 monthly installments and in my

considered view has rightly done so. In the facts of the case, extending the repayment scheme to any further period is not called for.

I therefore do not find any error in the impugned orders. The writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-